

Application No. 10/763,463  
Amendment dated September 26, 2005  
Reply to Office Action of May 25, 2005

### **REMARKS/ARGUMENTS**

Responsive to the Official Action mailed May 25, 2005, reconsideration is respectfully requested.

Applicants wish to thank the Examiner, Ms. Elizabeth D. Wood, for the courtesies extended to applicants' representative, James C. Edwards, Esq. and Mr. Nick M. Carter, of Polymer Group, Inc., during the personal interview conducted on August 31, 2005. In response to the Interview Summary prepared by the Patent Examiner, applicants hereby state that they essentially concur with the substance of interview prepared by the Examiner, and therefore, no further statement is deemed to be necessary at this time.

In accordance with the Examiner's requirement, applicants submit herewith the Declaration of Inventor Anderson complying with 37 C.F.R. 1.67(a). Entry is respectfully requested.

In the Action, the Examiner has rejected the pending claims under 35 U.S.C. §103, with reliance upon U.S. Patent No. 5,807,458, to Sanders et al., and has further rejected the claims under 35 U.S.C. §102/103, with reliance upon PCT Publication No. WO 00/49211. However, it is respectfully maintained that neither of these references teach or suggest applicants' novel unitized fibrous concrete reinforcement construct, and accordingly, the Examiner's rejections are respectfully traversed.

In an effort to advance prosecution, applicants submit herewith the Declaration of Mr. Nick M. Carter. As detailed in Mr. Carter's Declaration, Mr. Carter supervised comparative testing of a concrete reinforcement product embodying the principles of the present invention, and a commercially available reinforcement product configured in accordance with the principal Sanders et al. patent. Significantly, and as set forth in detail in Mr. Carter's Declaration, the

product formed in accordance with the present invention exhibited distinctly improved dispersal characteristics, thus greatly facilitating efficient use of the product. At the same time, the "unitized" nature of the present concrete reinforcement constructs imbues the product with a "flowable" nature, whereby the product can be readily shipped, stored, measured, and dispersed into an associated concrete mixture.

By Mr. Carter's Declaration, applicants also submit evidence in connection with the PCT publication cited by the Examiner, as well as evidence bearing on the *Graham v. John Deere* indicia of non-obviousness.

Entry of Mr. Carter's Declaration into the record is respectfully requested, and consideration by the Examiner is respectfully solicited.

In this regard, Mr. Carter's Declaration explains that the result of the comparative testing which was performed is believed to clearly refute the Examiner's characterization of the present invention as merely *a classic example of a result-effective variable*. In this regard, applicants respectfully submit that the Declaration of Mr. Carter provides convincing evidence to the contrary.

Additionally, applicants respectfully refer to M.P.E.P. Section 2144.05, discussing "optimization of ranges". In this regard, the M.P.E.P. specifically admonishes that:

A particular parameter *must first be recognized as a result-effective variable*, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation (emphasis supplied; citations omitted).

In the present case, applicants understand the Examiner to be suggesting that their claimed limitation that the recited circumferential retaining element circumscribe *no more than 80% of the total surface area* is a "result-effective variable" of the teachings of the Sanders et

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al. patent. However, applicants must respectfully maintain that this is *specifically contrary* to the above-noted requirement of the M.P.E.P. Clearly, *there is no recognition in Sanders et al. that the degree of circumferential wrapping is a result-effective variable*. Sanders et al. is undeniably *limited in its teachings* to the provision of an *overlapping retaining element*, which substantially encapsulates and completely covers the outside surface of the bundled fibrous elements.

Thus, it is respectfully maintained that the Examiner's characterization of applicants' claimed construct as "a classic example of a result-effective variable" is inappropriate given the specific requirements set forth in the M.P.E.P.

In this regard, applicants respectfully refer to M.P.E.P. Section 2143.03, which specifically requires that "all claim limitations must be taught or suggested" (citation omitted). Clearly, there is *no teaching* in the principal Sanders et al. reference of applicants' claimed arrangement for the circumferential retaining element, instead, only *contrary teachings* that the fibrous elements be substantially completely encapsulated by the retaining element.

Similarly, the cited PCT publication is clearly deficient in teaching or suggesting the present invention as claimed, in that this reference has *no teaching* whatsoever of providing a *spirally oriented* circumferential retaining element, much less any teaching of providing a spirally oriented circumferential retaining element circumscribing no more than 80% of the total surface area of the associated unitized fibrous constructs.


In an effort to further advance prosecution, applicants submit herewith a Terminal Disclaimer referencing commonly-assigned co-pending application Serial No. 10/856,613, and No. 10/857,652. Entry is respectfully requested.

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In view of the foregoing, formal allowance of claims 1-13, 14- 24, 26-29, and 31 is believed to be in order and is respectfully solicited. Should the Examiner wish to speak with applicants' attorneys, they may be reached at the number indicated below.

The Commissioner is hereby authorized to charge any additional fees which may be required in connection with this submission to Deposit Account No. 23-0785.

Respectfully submitted,

By   
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Certificate of Mailing by Express Mail

I hereby certify that this Preliminary Amendment is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 CFR 1.10 addressed to Commissioner of Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, Express Mail Label No. EV 576547339 US on **September 26, 2005**.

  
Colleen Davison